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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-80339]

Order Granting Application by C2 Options Exchange, Incorporated for an Exemption Pursuant to Section 36(a) of the Exchange Act from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference
March 29, 2017.

C2 Options Exchange, Incorporated (“C2” or “Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of the Chicago Board Options Exchange, Incorporated (“CBOE”) that the Exchange seeks to incorporate by reference. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

Both C2 and CBOE are Participants in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”).³ Each Participant in the CAT NMS Plan is required to enforce compliance by its members with the provisions of the Plan by adopting a “Compliance Rule” applicable to its members.⁴ On January 30, 2017, CBOE filed a proposed rule change with the Commission to adopt new Section F to Chapter VI of its rules to

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the CAT NMS Plan or CAT NMS Plan Approval Order.

⁴ Id. at 84945, 84950.

implement the CAT Compliance Rule.⁵ On the same day, C2 filed a proposed rule change with the Commission to incorporate by reference, in new Section F of Chapter 6 of its rules, the rules contained in Section F of Chapter VI of CBOE's rules.⁶

C2 has requested, pursuant to Rule 0-12 under the Exchange Act,⁷ that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to Section F of Chapter 6 of C2's rules that are effected solely by virtue of a change to Section F of Chapter VI of CBOE's rules. Specifically, C2 requests that it be permitted to incorporate by reference changes made to Section F of Chapter VI of CBOE's rules⁸ without the need for C2 to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.⁹ By virtue of these incorporations by reference, the requirements applicable to C2 Permit Holders¹⁰ will change when the applicable CBOE rules change, without the need for C2 to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.¹¹

⁵ See Securities Exchange Act Release No. 79950 (February 2, 2017), 82 FR 9916 (February 8, 2017).

⁶ See Securities Exchange Act Release No. 79953 (February 3, 2017), 82 FR 10034 (February 9, 2017). CBOE and C2's proposed rule changes were approved by the Commission on March 15, 2017. See Securities Exchange Act Release No. 80256, 82 FR 14526 (March 21, 2017).

⁷ 17 CFR 240.0-12.

⁸ C2 Chapter 6, Section F states: "The rules contained in Section F of CBOE Chapter VI relating to the Consolidated Audit Trail (CAT) Compliance Rule, as such rules may be in effect from time to time, shall apply to C2 and are hereby incorporated into this Chapter."

⁹ See Letter from Laura G. Dickman, Lead Counsel, CBOE, to Brent J. Fields, Secretary, Commission, dated January 30, 2017 ("C2 Letter").

¹⁰ "Permit Holder" means "the Exchange recognized holder of a Trading Permit. A Permit Holder is also known as a Trading Permit Holder under the Bylaws. Permit Holders are deemed 'members' under the Exchange Act." C2 Rule 1.1.

¹¹ C2 Letter, supra note 9.

The Exchange represents that Section F of Chapter 6 is a category of Exchange rules (rather than individual rules within a category) that are not trading rules, and that the incorporation by reference of CBOE Chapter VI, Section F, which are regulatory rules, is intended to be a comprehensive integration of the relevant CBOE rules into C2's rules. The Exchange has agreed to provide written notice to its members whenever CBOE proposes a change to a CBOE rule that the Exchange has incorporated by reference.¹²

The Exchange believes this exemption is necessary and appropriate to maintain consistency between C2 rules and the relevant CBOE rules, thus helping to ensure identical regulation of C2 Permit Holders that are also CBOE Trading Permit Holders¹³ with respect to the incorporated provisions as well as helping to ensure that C2-only Permit Holders are subject to consistent regulation as CBOE Trading Permit Holders.¹⁴ The Exchange believes that, without such an exemption, such Permit Holders could be subject to two different standards.¹⁵

The Commission has issued exemptions similar to the Exchange's request.¹⁶ In granting one such exemption in 2010, the Commission repeated a prior, 2004 Commission statement that

¹² The Exchange will provide this notice by posting on its website, at the same location as it posts its own rule filings as required by Rule 19b-4(l), a link to the location on CBOE's website where the proposed rule change is posted. Id.

¹³ "Trading Permit Holder" means "any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit . . . A Trading Permit Holder is a 'member' solely for purposes of the [Exchange] Act." See CBOE Rule 1.1 (citing Section 1.1 of CBOE Bylaws).

¹⁴ C2 Letter, supra note 9.

¹⁵ Id.

¹⁶ See, e.g., Securities Exchange Act Release Nos. 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR-BX-2012-030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request

it would consider similar future exemption requests from other self-regulatory organizations (“SROs”), provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission’s release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;¹⁷

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁸

relating to rules incorporated by reference by the BATS Exchange Options Market rules) (“BATS Options Market Order”); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR-BX-2012-030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); and 57478 (March 12, 2008), 73 FR 14521, 14539-40 (March 18, 2008) (order approving SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

¹⁷ See 17 CFR 240.0-12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (“Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule”).

¹⁸ See BATS Options Market Order, supra note 16 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (“2004 Order”)).

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.¹⁹ The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever CBOE changes a rule that the Exchange has incorporated by reference.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,²⁰ that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in its request that incorporate by reference certain CBOE rules that are the result of changes to such CBOE rules, provided that the Exchange promptly provides written notice to its members whenever CBOE proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

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Assistant Secretary

¹⁹ See BATS Options Market Order, supra note 16, 75 FR at 8761; see also 2004 Order, supra note 18, 69 FR at 8502.

²⁰ 15 U.S.C. 78mm.

²¹ 17 CFR 200.30-3(a)(76).

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